

Management Board minutes

Monday 28 July 2014

Members and other attendees present

Christopher Graham	Information Commissioner (chair)
Simon Entwisle	Deputy Chief Executive Officer
Andrew Hind	Non-executive Director
Neil Masom	Non-executive Director
Enid Rowlands	Non-executive Director
David Smith	Deputy Commissioner Data Protection
Graham Smith	Deputy Commissioner Freedom of Information
Ian Watmore	Non-executive Director
Louise Mottershead	(secretariat)
Neil Bostock	(secretariat)

1. Introductions and apologies

- 1.1. Louise Mottershead was introduced as providing secretariat cover during Peter Bloomfield's absence. Neil Bostock was also in attendance. It was noted that this would be Neil Masom's final Management Board meeting.

2. Declaration of interests

- 2.1. Enid Rowlands had been appointed the Chair of the Solicitors Regulatory Authority with effect from 1 January 2015 and it had been agreed that she would step down as a Non-executive member of the Board with effect from 31 December 2014. Christopher Graham confirmed the search for Enid's successor would begin after the summer holiday period.

Action point 1: Christopher Graham to liaise with Organisational Development about Enid Rowland's replacement.

3. Matters arising from the meeting of 28 April

- 3.1. The minutes from the previous meeting were agreed subject to the following amendments.

Point 3.7, first sentence, should read "It was agreed that Remuneration Committee should not become an overarching Human Resources committee for the ICO."

Point 4.4, final sentence, should read "...then the Commissioner would report to the Public Administration Select Committee."

Point 8.2, first sentence, should read "The Judicial Reviews of the Ministerial Veto of the disclosure of HRH the Prince of Wales' correspondence with ministers and the HS2 Project Assessment Review report were discussed."

- 3.2. Outstanding action "Simon Entwisle to finalise the IT strategy (including the impact of changing IT budgets) and to bring it to Executive Team by September": the work was ongoing and was broadly on-track, although a slight delay until the beginning of October might be necessary.

- 3.3. With reference to the outstanding action "Christopher Graham and Enid Rowlands to discuss how best to consult with other Management Board members over the work of the Remuneration Committee", this had been discussed and it had been agreed that the terms of reference should be amended to reflect the more strategic approach.

Action point 2: Secretariat to ensure that the amended terms of reference for the Remuneration Committee come to the next (October) meeting of the Management Board.

- 3.4. Outstanding action "Christopher Graham to ensure that Leadership Group discussed the Heartbleed bug": an item on advice for individuals was on the agenda for the Information Rights Committee (IRC) meeting of 12 August. The heartbleed bug was one example of a situation where the ICO could and should helpfully issue timely advice to the public. As such the action was closed.

4. Commissioner's forward look

- 4.1. The Commissioner updated the Board on the ICO's Leveson guidance: the launch event would be on Thursday 4 September at the House of Commons, sponsored by John

Whittingdale MP, chair of the Commons Culture Select Committee.

Action point 3: Christopher Graham to liaise with Corporate Affairs to ensure that Non-executive Directors are invited to the launch of the media guidance by the end of July

- 4.2. Simon Entwisle updated the Board on the proposed consultation on enforcement of the Privacy and Electronic Communications Regulations. A letter had been received from DCMS last week advising that removing the reference to “substantial harm or substantial distress” as a necessary hurdle for the ICO to surmount when imposing a civil monetary penalty was the preferred option in the DCMS draft consultation document. The DCMS had indicated that the consultation would be launched in mid-August.
- 4.3. Ian Watmore expressed concern that the new Head of Finance would not report directly to Simon Entwisle. It was explained that although the new Head of Finance was a fully qualified accountant, she would benefit from working closely with the Head of Good Practice who, having experience of financial work and internal audit, was considered the most appropriate person to provide line management support while the new Head settled into her role.
- 4.4. It was further explained that the Finance Steering Group, of which the Head of Finance was a member, reported directly to Executive Team (ET) and that the Head of Finance was also a member of the Leadership Group. In these fora the Head of Finance would have frequent contact with the Deputy CEO. The aim in making these changes was to secure a better means of ET keeping across financial performance and financial planning. The point was made that the Head of Finance would also have direct access to the Commissioner, as Accounting Officer, and the chair of the Audit Committee as the need arose.

Action point 4: Simon Entwisle to review the Head of Finance’s objectives to ensure there was sufficient emphasis on her ability to raise concerns directly with ET members collectively, by the end of August.

5. Review of ICO funding, powers and independence

Funding

- 5.1. The ICO had to be seen as credible, with adequate resources, in order to successfully tackle the lack of

consumer confidence in digital developments. Ministry of Justice officials were due to discuss further the treatment of data protection and freedom of information as “information rights” for funding purposes on 5 August. However it was noted that agreement to a single information rights fee might be some way off.

- 5.2. Further raising the profile of freedom of information (FOI) was discussed. There was scope for various initiatives to mark the 10th anniversary of the Act coming into force on 1 January 2005.

Powers

- 5.3. A response had been received from government on an extension of the non-consensual audit power to health service bodies. Regulations would be laid after the summer recess with the expectation that these would come into force by the end of the year. Enforced subject access (s56) would commence from 1 December, but there was no progress to report on the outstanding s55 issue.

Independence

- 5.4. A commitment to additional funding from the Home Office had been given in Parliament for the new duties arising from the recently enacted Data Retention and Investigatory Powers Act. This funding would allow for the recruitment of a technically qualified audit team. It was noted that the funding would be in the form of grant in aid.
- 5.5. The proposed triennial review of the ICO was discussed, noting that the Cabinet Office had previously exempted the ICO from the requirement. In the light of the EU obligation to have a regulatory authority that is “completely independent” of government such a review could concentrate on the way the ICO works rather than whether the ICO is needed in the first place.
- 5.6. A review might assist development of a different funding model, and also allow consideration of a different sponsorship arrangement. Additionally, thought could be given to the suggestion in the Leveson report of re-constituting the ICO as a commission with commissioners, as well as reviewing the Framework Agreement which was itself due for revision this September.
- 5.7. Following discussion it was agreed that the ICO had nothing to fear from a challenging look at the way it works. The review would need to be completed promptly in view of the need to start recruiting for the next Information Commissioner in a year’s time.

Action point 5: Christopher Graham to confirm to the Ministry of Justice the ICO's willingness to undergo the Triennial Review.

6. Review of decision making in times of uncertainty

- 6.1. The Grant Thornton internal audit report was discussed. It was noted that the study had concluded that the ICO did not clearly define what actions would be taken by which ICO committees/steering groups or at what point issues were referred upwards for decision. While not all of the points made in their study were regarded as needing to be taken forward, it was agreed that the terms of reference for each committee/group were insufficiently clearly defined and needed amendment in the light of the points made.

Action point 6: Peter Bloomfield to ensure that terms of reference for the corporate governance committees were considered by ET with the aim of better defining decision making, by the end of September.

7. Changes to terms of reference to reflect the recent re-organisation

- 7.1. This item was discussed in conjunction with item 6 above. Further to point 4.6 of the previous minutes and following the Audit Committee on 6 June, Neil Masom said the risk register still needed to be further strengthened to incorporate opportunities and be more clearly aligned with corporate objectives and the ICO plan.

8. Performance against the ICO Plan

- 8.1. It was noted the ICO's performance was on-track after the first Quarter.

9. Finances

- 9.1. It was noted that managing IT project expenditure and predicting rising notification fee income were ongoing issues but confidence was high that all targets would be reached.
- 9.2. Lessons learned from the previous year were discussed. It was noted that the newly established Steering Groups would provide better strategic direction.

10. Issues reports

- 10.1. The style of the reports and the extensive range of activities undertaken by the ICO were noted with appreciation by the Non-executive Directors.

Information Rights

- 10.2. Research on civil monetary penalties had been undertaken and a discussion paper on Big Data was to be published.
- 10.3. It was noted that more freedom of information issues were reaching the higher courts and several key provisions of the legislation were due to be considered in the coming months.

Corporate Affairs

- 10.4. Increased staff turnover and sickness absence (some of it long-term) was noted as an area for concern for the ICO.

11. Executive Team meetings

- 11.1. The minutes of ET meetings since the last Management Board were presented for information.

12. Audit Committee

- 12.1. The minutes of the last Audit Committee were presented for information.
- 12.2. Management Board were pleased with the year-end process given the change in personnel at a key period.

13. Remuneration Committee

- 13.1. The trade unions were being briefed later this week about decisions on Executive Team salaries following the recent reorganisation. Remuneration Committee had advised on the appropriate salary for the new role of Deputy Chief Executive Officer. Consequential changes would not impact on the limited funds available under the pay remit which was being agreed with the Ministry of Justice.

14. Any other business

- 14.1. Christopher Graham updated Management Board on the current status of the accommodation review.
- 14.2. Christopher Graham thanked Neil Masom for his contribution as a Non-executive Director and wished him well for the future. It was noted that Ian Watmore would take over as Chair of the Audit Committee following Neil's departure.